

REMARKS**Interview**

Applicants and their undersigned representative thank Examiner Hines for the helpful and courteous interview on August 29, 2006. As shown in the claim amendments herein, Applicants have amended the claims as discussed during the interview.

Amendment to the Claims

Claims 98-99 and 101-106 are pending and under consideration in the instant application. Claim 98 has been amended and new claims 117-120 have been added. In particular, claim 98 has been amended to recite that the autostart means comprises a capacitance sensor that senses a change in capacitance when a sample or buffer is applied to the test strip placed in the receptacle, and initiates timing of the assay.

No new matter is added by the amendment to the claims. Support for the amendment to claim 98 can be found, *inter alia*, at page 22, line 23 – p.23, line3 of the application as originally filed (paragraph 63 of U.S. Publication 2005/0074899). Support for new claims 117, 118 and 119 can be found at page 18, lines 13-16, page 19, lines 16-18 and page 19, line 34 – page 20, line 1, respectively. Support for new claim 20 can be found at page 24, lines 14-16 of the application as originally filed. Accordingly, entry into the instant application is proper and respectfully requested.

Applicants emphasize for the record that none of the amendments made herein are narrowing amendments. Applicants expressly reserve the right to equivalents of all claim limitations to the full extent available.

Rejection Under 35 U.S.C. §102

Claims 98-99 and 101-106 have been rejected under 35 U.S.C. § 102 as allegedly being anticipated by Zweig (U.S. Patent No. 5,554,531). The Office Action states that the conductive plates of Zweig meet the limitations of the capacitor plates of the instant application and are capable of performing the intended use.

Applicants respectfully submit that the claims of the instant application are drawn to an apparatus comprising, *inter alia*, an autostart means that comprises a capacitance sensor that senses a change in capacitance when a sample or buffer is applied to the test strip that is placed in the receptacle, and then initiates timing of the assay. Zweig does not disclose sensing a change in capacitance when a sample or buffer is applied to the test strip. The mere fact that the Zweig apparatus contains two plates made of conductive material, which could perhaps inherently serve as capacitor plates, does not mean that it discloses the mechanism of sensing capacitance change as means to trigger autostart. Therefore, Applicants submit that the present invention is different from, and therefore not anticipated by, Zweig and request that the rejection under 35 U.S.C. §102 be withdrawn.

Double Patenting

Claims 98-99 and 101-106 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 5-8 of U.S. Patent No. 6,136,610. Applicants will file a terminal disclaimer in compliance with 37 CFR 1.321(c) once the claims of the present application are indicated as allowable but for the double patenting issue.

Objection to the Claims Under 37 C.F.R. § 1.75(c)

Claims 102-106 have been objected to under 37 C.F.R. § 1.75(c) as allegedly being of improper dependent form for failing to further limit the subject matter of a previous claim. Specifically, the Examiner asserts that claims 102-106 are drawn to biological samples and fail to further limit the structure of the claimed apparatus.

Applicants respectfully submit that claims 102-106 are directed to an apparatus comprising a test strip that *contains* a biological sample. They are not directed to the biological sample *per se*. For example, Claim 98 recites an apparatus comprising, *inter alia*, a housing having a receptacle for retaining a test strip for a lateral flow assay and claim 101 is directed to the apparatus of claim 98 further comprising the test strip. Claim 102 is directed to the *apparatus* of claim 101 wherein the test strip contains a

biological sample and claims 103-106 further limit the biological sample contained in the test strip which is part of the *apparatus* of claim 98. Applicants submit that because the test strip is part of the claimed apparatus, the contents of the test strip are also part of the claimed apparatus. Thus the different biological samples contained in the test strip that is contained in the claimed apparatus do limit the structure of the claimed apparatus.

In view of the above, Applicants submit that claims 102-106 are of proper dependent form and do further limit the subject matter of a previous claim. Accordingly Applicants request that the objection under 37 C.F.R. § 1.75(c) be withdrawn.

CONCLUSION

In light of the above amendments and remarks, Applicants respectfully submit that claims 98-99, 101-106 and 117-120 satisfy all the criteria for patentability and are in condition for allowance. Applicants request that the Examiner reconsider this application with a view towards allowance and solicit an early passage of claims 98-99, 101-106 and 117-120 to issuance. The Examiner is invited to call the undersigned attorney, if a telephone call could help resolve any remaining items.

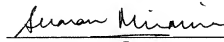
Pursuant to 37 CFR § 1.136(a)(3), the Commissioner is hereby authorized to charge all required fees, including fees under 37 CFR § 1.17 and all required extension of time fees, or credit any overpayment, to Deposit Account No. 50-1283.

Dated: September 7, 2006

COOLEY GODWARD LLP
ATTN: Patent Group
The Bowen Building
875 15th Street NW, Suite 800
Washington, DC 20005-2221
Tel: (415) 693-2002
Fax: (415) 692-2222

Respectfully submitted,
COOLEY GODWARD LLP

By:


Suman Mirmira
Reg. No. 55,458